IN THE U.S. DISTRICT COURT OF MARYLAND
FOR DISTRICT OF MARYLAND

Kristine L. DeWitt **1310 Linden Avenue, #2** **Severna Park, Maryland 21227**	* *	
Kristy Narer **P.O. Box 252** **Clarksville, Maryland 21029**	* *	
Plaintiffs	*	
v.	*	**Case No. ___________**
Elite Center, LLC **(d/b/a Center Court)** **5507 Selma Avenue** **Halethorpe, Maryland 21227**	* * *	**JURY TRIAL DEMANDED**
Wendy Yi **5507 Selma Avenue** **Halethorpe, Maryland 21227**	* *	
Defendants	/	

COMPLAINT

Plaintiffs, Kristine L. DeWitt ("DeWitt") and Ms. Kristy Narer ("Narer") (collectively referred to as "Plaintiffs"), through undersigned counsel, state a complaint against Defendants Elite Center, LLC (t/a Center Courb), and Wendy Yi ("Yi"), pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq*. ("FLSA"), and supplemental state law claims under the Maryland's Wage and Hour Law, Md. Code Ann., LE § 3-401 *et seq* ("MWHL"), and the Maryland Wage Payment and Collection Law, Md. Code Ann., LE §,3-501 *et seq* ("MWPCL"), and demand a jury trial, as follows:

Introduction, Jurisdiction and Venue

1. This Court has original jurisdiction of the FLSA action pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

2. This Court has supplemental jurisdiction over the Maryland Wage and Hour Law and the Maryland Wage Payment and Collection Law claims pursuant to 28 U.S.C. § 1367(a) because said claims are so related to the FLSA claims that they form part of the same case or controversy.

3. Venue and personal jurisdiction is proper pursuant to 28 U.S.C. § 1391(b) and (c) because the events and omissions giving rise to these claims occurred within this judicial district, and all Defendants regularly conduct business in this judicial district.

4. Plaintiffs were employed by the Defendants at "Center Court," a bar and package goods store in Halethorpe, Maryland. By failing to pay the Plaintiffs the statutory minimum wage and overtime wages that were due, Plaintiffs allege that Defendants willfully violated very clear and well-established minimum wage and overtime provisions of the FLSA. Similarly, Plaintiffs allege that the Defendants violated the minimum wage provisions of the MWHL, and failed to pay earned wages in violation of the MWPCL. In addition to actual sums owed, Plaintiffs seek liquidated (statutory) damages pursuant to the FLSA, pre-judgment interest on all amounts owed under the MWHL, and attorneys' fees and costs as provided under the FLSA, the MWHL, and the MWPCL.

5. Defendant Elite Center, LLC purchased the Center Court in 2104. Defendant Elite Center, LLC, a Maryland corporation, is, on information and belief, co-owned and operated by Defendant Wendy Yi ("Yi"). At all material times, Center Court had an annual gross volume of sales made or business done in an amount exceeding $500,000.00.

6. Defendant Elite Center, LLC employs at least two or more employees who are engaged

in commerce, produce goods for commerce, or handle, sell, or otherwise work on goods or materials that have moved in or were produced for commerce as a single enterprise under the FLSA. For instance, there are employees of the Defendant who negotiate and purchase alcoholic beverages from producers and suppliers who operate in interstate commerce. There are employees who serve and otherwise handle these beverages that cross interstate and even international boundaries. There are employees who regularly use wire and electronic means of communicating interstate, including the Plaintiffs, who also regularly sell alcoholic beverages that has moved in interstate commerce, and who regularly process credit card transactions for customer payments. There are employees who use, in the Defendant’s bar/package goods store, cleaning products, dishes, tools, utensils, napkins, menus, signage, among other items, that have moved in interstate commerce. Accordingly, Defendant Elite Center, LLC, a covered entity, which satisfies the enterprise coverage provisions under the FLSA. Defendants also satisfied the coverage provisions of the MWHL, insofar as it grosses at least $400,000.00/year. As a covered enterprise, Defendant has at all material times been an “employer” within the meaning of the FLSA, MWHL, and MWCPL.

7. Defendant Wendy Yi is, on information and belief, an officer and co-owner of Defendant Elite Court, LLC. Defendant Yi supervises the administration of Center Court, and maintains either direct or indirect control over the scheduling of employees for work. Upon information and belief, Defendant Yi receives income and/or salary from Defendant Elite Court, LLC. Defendant Yi has, at all material times, been actively engaged in the management and direction of employees at Center Court, including the Plaintiffs, and has possessed and exercised authority and discretion to hire and fire employees, and to fix, adjust, and determine the hours worked and the wages paid to employees at Center Court, including the Plaintiffs. Upon information and

belief, Defendant Yi has custody and control of business records and is responsible for maintaining those records. At all material times, Defendant Yi was an "employer" within the meaning of the FLSA, 29 U.S.C. § 203(d), and the MWHL, Md. Code Ann., LE § 3-401(b), and thus, Defendant Yi is jointly and individually liable for damages to the Plaintiff arising under the FLSA, the MWHL, and the MWCPL.

General Allegations

8. Plaintiff Dewitt employed by the Defendants from April, 2016 to August, 2016. Plaintiff Narer was employed by the Defendants from March, 2016 to September, 2016. Throughout their employment at Center, Court, Defendant Yi scheduled Plaintiffs DeWitt and Narer to work: (i) bartender shifts in the bar; and (ii) shifts in in the package goods store. As bartenders, Plaintiffs took beverage orders from guests and served alcoholic beverages to guests. As employees in the package goods store, Plaintiffs sold alcoholic beverages to take-out customers.

9. Defendants required all hourly employees, including the Plaintiffs, to be paid in cash and off-the-books. At all material times, Plaintiffs were paid less than the required minimum wage. Plaintiff Narer was paid an hour wage of $7.00/hour for working in the package goods store, and $4.00/hour as a bartender. Plaintiffs DeWitt and Narer were tipped employees during their bartender shifts. Defendants failed to pay any payroll or unemployment insurance taxes, or to provide workers' compensation insurance. Defendants also failed to maintain records of the hours actually worked by the Plaintiffs.

10. Plaintiffs were not exempt from the minimum wage or overtime compensation requirements under the FLSA or MWHL.

11. Defendants have violated rights of the Plaintiffs to be paid the full minimum wage. While the FLSA allows employers to pay less than minimum wage to employees who receive

tips, 29 U.S.C. § 203(m), the employer must still pay at least $2.13/hour under the FLSA and $3.63/hour under the MWHL, and must allow the tipped employees to retain all tips (except in a valid tip pooling arrangement, which is not at issue in this case).

12. Defendants were required by the FLSA and the MWHL (29 U.S.C. § 203(m) and Md. Code Ann., LE § 3-419 (respectively)), to inform tipped employees, like Plaintiff, that among other things, the tipped employees were entitled to retain all of their tips except in a valid tip pooling arrangement, before they could *potentially* pay $3.63 an hour to the Plaintiffs, an hourly wage which is lower than the requirements of 29 U.S.C. § 206, and half of the minimum wage as set forth in Md. Code Ann., LE § 3-413. However, Defendants have violated the FLSA in three ways, two of which have to do with the failure of the Defendants to properly take a potential credit against the full minimum wage based on tips collected by an employee.

13. First, while the FLSA allows employers to pay less than minimum wage to employees who receive tips, 29 U.S.C. § 203(m), in order to take a so-called "tip credit" and apply it towards the employee's minimum wage, an employer must inform the employee that it will take a tip credit and otherwise strictly comply with the regulatory requirement of 29 C.F.R. § 531.59(b). Defendants did not comply with the requirements of 29 C.F.R. § 531.59(b), by informing Plaintiffs of the amount of the tip credit taken, that a tipped employee had a right to retain his/her tips except in a valid tip pooling arrangement, and that no tip credit could be taken without first being informed of the provisions of 29 U.S.C. § 203(m).

14. Second, Defendants have violated the right of Plaintiffs to be paid the full minimum wage by failing to comply with the FLSA's tip credit notice requirements and by making impermissible deductions in violation of the tip credit requirements. Defendant's management had a practice of requiring Plaintiffs to pay for business losses such as customer walk-outs while

they were working as bartenders by making deductions from their cash wages. By requiring Plaintiffs to pay for business losses, Defendants maintained an illegal practice of requiring tipped workers to not retain all of their tips in violation of the FLSA.

15. Third, Defendants did not pay Plaintiff their hourly cash wages for all of the hours which they worked. For example, Plaintiff Narer was not paid anything for the work she performed during four training shifts, i.e., two in the bar and two in package goods. Similarly, Plaintiff Narer was often asked to pick up additional shifts, to come in early and/or to work beyond her scheduled hours, but was not always paid for this work time. Defendants violated the record-keeping requirements by failing to maintain records of the hours worked by the Plaintiffs during each day and week of work. Defendants' failure to pay Plaintiffs for all of the hours which they actually worked violates the FLSA, MWHL and MWPCL.

16. In addition, Plaintiffs DeWitt and Narer regularly worked more than 40 hours in a statutory workweek. However, for this work, Plaintiffs were not paid overtime compensation. Under the FLSA, Plaintiffs should have received at least $10.88/hour for all overtime hours worked in a statutory workweek. However, Plaintiffs were never paid any type of overtime compensation during their employment, and were only paid their straight time cash wage rate even when they 7orked more than forty (40) hours in a statutory workweek. Defendants knowingly adopted and enforced a policy of not paying overtime compensation to hourly employees, like the Plaintiffs, who worked more than forty hours per week.

COUNT I
(FLSA - Failure to Pay Minimum Wage)

17. Plaintiffs incorporate paragraphs 1-16 as set forth above, and states that Defendants' actions complained of herein constitute a willful violation of 29 U.S.C. § 206 (minimum wage), because Defendants have at all material times failed to pay Plaintiffs the proper minimum wage

rate, free and clear and in a timely manner, and otherwise failed to comply with the requirements of 29 U.S.C. § 203(m).

18. As a result, Plaintiffs have the legal right to receive the full minimum wage, as required by Federal law and applicable Federal regulations.

COUNT II
(FLSA - Failure to Pay Overtime)

19. Plaintiffs incorporate paragraphs 1-18 as set forth above, and states, in addition, that Defendants' actions complained of herein constitute a violation of Section 207 of the FLSA, because Defendants willfully failed to pay Plaintiffs an overtime wage of at least 1 ½ times the applicable minimum wage of $7.25/hour, for certain statutory work weeks, and as a result, Plaintiffs have failed to receive overtime pay, as required by Section 207 of the FLSA, 29 U.S.C. § 207.

COUNT III
(Maryland Wage/Hour Law - Failure to Pay Minimum Wage)

20. Plaintiffs incorporate paragraphs 1-19 as set forth above, and states that Defendants' actions complained of herein constitute a violation of Md. Code Ann., LE § 3-413 (minimum wage), because Defendants have at all material times failed to pay Plaintiffs, a proper minimum wage rate, free and clear and in a timely manner, and otherwise failed to comply with the requirements of Md. Code Ann., LE § 3-419.

21. As a result, Plaintiffs have the legal right to receive the full minimum wage, as required by Maryland law and applicable Maryland regulations.

COUNT IV
(Maryland Wage/Hour Law - Failure to Properly Pay Overtime)

22. Plaintiffs incorporate paragraphs 1-21 as set forth above, and states, in addition, that Defendants' actions complained of herein constitute a violation of Md. Code Ann., LE § 3-415,

because Defendants willfully failed to pay Plaintiff an overtime wage of at least 1 ½ times the applicable minimum wage for statutory work weeks in which he worked more than forty hours per week during the period since July 1, 2014.

COUNT V
(Violation of Maryland Wage Payment and Collection Law)

23. Plaintiffs incorporate paragraphs 1-22 as set forth above, and states that the actions of Defendants, in failing to pay wages (minimum wage and overtime) that are legally owed, free and clear, without coercion and intimidation, are a violation of the MWCPL, Md. Code Ann., LE § 3-502(a)(ii) and § 3-505(a).

24. That the MWCPL further compels each employer and employee to make, as part of any working agreement, a promise to pay minimum wage and overtime compensation, as applicable under the MWHL.

25. Defendants' violations of the MWPCL were not the result of a bona fide dispute.

26. Plaintiffs are thus entitled under the MWPCL, Md. Code Ann., LE § 3-507.2 to an award of treble damages and attorneys' fees with respect to the wages, i.e., the MWHL-mandated wages that have gone unpaid.

Prayer

Based on the foregoing allegations, Plaintiffs respectfully request that this Court grant money damages in an amount to be determined by the evidence, exclusive of attorney's fees and costs; and in support thereof, request this Honorable Court to issue the following Orders:

(a) Order Defendants to pay Plaintiffs all unpaid minimum wage payments determined by the Court to be due and owing to Plaintiff under the FLSA (and under the Maryland Wage/Hour law), as well as a sum of liquidated damages in an amount equal to the amount of any unpaid minimum wage payments awarded to Plaintiff;

(b) Order Defendants to pay Plaintiffs all unpaid overtime premiums determined by the Court to be due and owing to Plaintiff under the FLSA (and under the Maryland Wage/Hour law), as well as a sum of liquidated damages in an amount equal to the amount of any overtime premiums awarded to Plaintiffs;

(c) Award Plaintiffs pre-judgment interest on any sums determined to be due and owing from Defendants under the Maryland Wage/Hour law;

(d) Order Defendants to pay Plaintiffs three times the amount earned wages not paid to Plaintiffs, i.e., the MWHL-mandated wages.

(e) Award Plaintiffs their reasonable attorneys' fees and costs; and

(f) Grant Plaintiffs any additional relief that the Court deems appropriate and just.

Respectfully submitted,

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/s/_Bradford W. Warbasse___
Bradford W. Warbasse
Federal Bar No. 07304
401 Washington Avenue, Ste. 200
Towson, Maryland 21204
(410) 337-5411

Counsel for Plaintiff

Jury Demand

Plaintiffs DeWitt and Narer, by their attorneys, hereby demand a jury trial as to all issues triable by a jury.

/s/ Bradford W. Warbasse

Bradford W. Warbasse